

**FILED**

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SEP 19 2011 **NF**

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Lang Exterior, Inc.  
An Illinois Corp.  
Plaintiff

V

CIVIL ACTION #11 CV 5517  
Honorable Rebecca Pallmeyer  
Room 2119

Lang Windows, Inc.  
And Dionne Lang an  
Illinois Corp. & Individual  
Defendant

Magistrate Sheila M. Finnegan

**DEFENDANT'S MOTION FOR MANDATORY INJUNCTION / THE  
ALTERNATIVE PETITION FOR RULE TO SHOW CAUSE FOR  
"SANCTIONS" FOR DEFAMATORY REMARKS w/AFFIDAVIT**

**MEMORANDUM OF LAW IN SUPPORT OF THE RELIEF  
REQUESTED**

The canons of ethic in the Rules of Professional Conduct constitute a safe guide for professional conduct, and attorneys may be disciplined for not observing them. *In re Himmel*, 125 Ill.2d 531, 533 N.E.2d 790, 127 Ill.Dec 708 (1988). Although they represent the best thoughts of the organized bar, it has been held that these canons are non-enforceable other than through the disciplinary proceedings. *Ettinger v. Rolewick*, 140 Ill.App.3d 295, 488 N.E.2d 598, 94 Ill.Dec.599 (1<sup>st</sup> Dist. 1986). Disciplinary proceedings and sanctions are strictly within the province of the Supreme Court. *Reed Yates Farms, Inc. v. Yates*, 172 Ill.App.3d 519, 526 N.E.2d 1115, 122 Ill.Dec 576 (4<sup>th</sup> Dist.), *appeal denied*, the Illinois Supreme Court, through its disciplinary arm, the Attorney Registration and Disciplinary Commission, is the only forum for exacting such punishment. *Beale v. Edgemark Financial Corp.*, 297 Ill.App.3d 999, 697 N.E.2d 820, 232 Ill.Dec. 78 (1<sup>st</sup> Dist. 1998). The ultimate authority to regulate and define the practice of law rests with the Supreme Court. *Perto v. Board of Review, Illinois Department of Employment Security*, 274 Ill.App.3d 485, 654 N.E.2d 232, 210 Ill.Dec. 933 (2d Dist.), *appeal denied*, 164 Ill.2d 581 (1995).

**Ethics**

All Illinois lawyers must be familiar with the **Illinois Rules of Professional Conduct**, and trail lawyers must be particularly familiar with the rules that apply specially to them.

**RPC 3.3, entitled "Conduct Before a Tribunal," sets forth the standards to be followed by the trial lawyer during "battle." Section (a) of that rule states:**

**(a) In appearing in a professional capacity before a tribunal, a lawyer shall not:**

- (1) make a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false;**
- (2) fail to disclose to a tribunal a material fact known to the lawyer when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;**
- (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;**
- (4) Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures;**
- (5) participate in the creation or preservation of evidence when the lawyer knows or reasonably should know the evidence is false ;**
- (6) counsel or assist the client in conduct the lawyer knows to be illegal or fraudulent;**
- (7) engage in other illegal conduct or conduct in violation of these Rules;**
- (8) fail to disclose the identities of the clients represented and of the persons who employed the lawyer unless such information is privileged or irrelevant;**
- (9) intentionally degrade a witness or other person by stating or alluding to personal facts concerning that person which are not relevant to the case;**
- (10) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of and accused, but a lawyer may argue, on analysis of evidence, for any position or conclusion with respect to the matter stated herein;**

### **Acts constituting direct, criminal contempt**

A wide variety of acts may constitute a direct, criminal contempt. And act may be criminal contempt even though it is also an indictable crime. *Beattie v. People*, 33 Ill. App 651, 1889 WL 2373 (1<sup>st</sup> Dist. 1889). As is making false representations to the court. *People v. Katelhut*, 322 Ill. App. 693, 54 N.E.2d 590 (1<sup>st</sup> Dist. 1944). Misconduct of an officer of the court is . Punishable as contempt. *People ex rel. Rusch v. Levin*, 305 Ill.App. 142, 26 N.E.2d 895 (1<sup>st</sup> Dist. 1939).

### **False statements**

Censure was recommended sanction for attorney who engaged in conduct involving dishonesty, made statement of material fact or law to tribunal which she knew or reasonably should have known to be false, and failed to disclose to tribunal a material fact known to her when disclosure was necessary to avoid assisting criminal or fraudulent at by client, given that attorney's misconduct was not result of dishonest or corrupt motive, but of misguided attempt to accommodate clients. 99 Ill.Atty.Reg. & Disc.Comm. SH11

Three-year suspension was recommended sanction for attorney who engaged in conduct involving dishonesty and fraud, made statement of material fact to tribunal which he knew or reasonably should have known was false, and offered evidence that he knew to be false and failed to take reasonable remedial measures. 96 Ill.Atty.Reg. & Disc.Comm. SH 358.

Disbarment was recommended sanction for attorney who engaged in conduct involving dishonesty, made false statements of material fact or law to tribunal which she knew were false and engaged in conduct which tended to defeat administration of justice. 95 Ill Atty.Reg. & Disc.Comm. CH 877.

Censure was recommended sanction for attorney who made statements of material fact or law known was false, and engaged in conduct which was prejudicial to the administration of justice. 95 Ill Atty.Reg. & Disc.Comm. CH 504

One-year suspension was recommended sanction for attorney who made statement of material fact which he knew was false in appearing in professional capacity before tribunal, made a statement of material fact which he knew to be false in course of representing client, and engaged in conduct involving dishonesty. 95 Ill Atty.Reg. & Disc.Comm. CH 191.

Disbarment was recommended sanction for attorney who engaged in serious misconduct by making misrepresentation during his divorce proceedings and who was a recidivist. 94 Ill.Atty.Reg. & Disc.Comm. SH469

### **Fraud on court**

Two-year suspension, retroactive to beginning of interim suspension, was recommended sanction for attorney who made statement of material fact or law to tribunal which lawyer knew or reasonably should have known to be false, instituted criminal charges as prosecutor when he knew or reasonably should

have known that charges were not supported by probable cause, committed criminal act that reflected adversely upon lawyer 's honesty, trustworthiness, or fitness as lawyer, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, engaged in conduct prejudicial to administration of justice, and engaged in conduct which tended to bring courts or legal profession into disrepute. 96 Ill.Atty.Reg. & Disc.Comm. CH 118.

**Respectfully Submitted**

  
**Dionne Lang**

5441 Fairmount Ave.  
Downers Grove Illinois 60515  
(630) 487-8312

**Pro Se**

## **Group Exhibit**

**A**



Edwin A. Getz  
312-569-1470 Direct  
312-569-3470 Fax  
edwin.getz@dbrr.com

*Law Offices*

191 North Wacker Drive  
Suite 3700  
Chicago, IL  
60606-1698

312-569-1000 phone  
312-569-3000 fax  
www.drinkerbiddle.com

CALIFORNIA  
DELAWARE  
ILLINOIS  
NEW JERSEY  
NEW YORK  
PENNSYLVANIA  
WASHINGTON DC  
WISCONSIN

August 30, 2011

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. Larry Leggett  
President  
Polaris Technologies  
500 Victoria Rd.  
Austintown, OH 44515

**Re: Cease and Desist Unauthorized and Infringing Use of LANG  
Trademark**

Dear Mr. Leggett:

Our law firm represents Lang Exterior, Inc. As you are undoubtedly aware, Lang Exterior is a custom window manufacturing company that has been in operation since 1953. Lang Exterior owns all rights in the LANG and LANG EXTERIOR trademarks, including United States Trademark Reg. No. 2,600,642 (copy enclosed). Lang Exterior is a highly-regarded name in the window industry, and through its over fifty-eight years of continuous use, has developed significant goodwill and recognition in its name and products.

It has recently come to our attention that you have been producing a line of windows titled the "Lang Window Line" for an individual who operates under the infringing business name "Lang Windows Inc." We are also aware that you are producing warranty cards for these windows that bear the "Lang Windows" name, as well as the "LW Inc." abbreviation for "Lang Windows Inc." This warranty card can be seen on Lang Windows Inc.'s web site, at [www.langwindowsinc.com](http://www.langwindowsinc.com). A copy is also attached to this letter. Your use of the LANG mark in connection with these windows is designed to deceive consumers into believing that these windows are sold by, authorized by, or somehow affiliated with Lang Exterior. As you know, this is not the case. Accordingly, this unauthorized use of Lang Exterior's trademarks constitutes trademark infringement and unfair competition. The "Lang Windows Inc." company is similarly engaging in such infringing behavior, and our client is currently pursuing this issue with them directly.

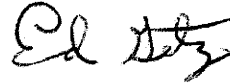
Neither Polaris Technologies nor Lang Windows Inc. is authorized to use the LANG trademark. We hereby demand that you terminate this infringing conduct immediately. Specifically, we must insist that Polaris Technologies immediately cease any further production of windows, warranty cards, product flyers, or any other materials

DrinkerBiddle&Reath

Mr. Larry Leggett  
August 30, 2011  
Page 2

that bear any of these unauthorized and infringing marks, and take steps to recall all such infringing material. We require written confirmation of your compliance with these demands by no later than September 9, 2011. If we do not receive such written assurance by that date, we will not hesitate to initiate legal proceedings to enforce our client's valuable rights and to seek damages and attorneys' fees for your willful infringement of those rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Getz", with a stylized flourish at the end.

Edwin A. Getz

EAG/JTB  
Enclosures

CH01/ 25803897.1



Products are fully warranted against defects in workmanship and materials under normal use and service for a Lifetime from date of installation. The Manufacturer agrees to repair or replace, at the factory, free of charge, any returned product that is found to be defective. This guarantee does not cover glass breakage or screen damage for any cause whatsoever, service calls to the home will be made at the prevailing rate.

**Lifetime Frame and Sash Warranty.** The Manufacturer warrants that the vinyl extrusions manufactured from Vinyl Compound, for use by the Manufacturer in fabricating the Window and Patio Door Products, are free from defects in material and workmanship in the course of manufacture and will not materially rot, rust, crack, warp, pit, corrode, peel or blister during the warranty period and will not materially fail to maintain their basic color characteristics in the warranty period.

**Insulating Glass Limited Warranty.** The Manufacturer warrants that its insulating glass units (the Product) will be free from material obstruction of vision as a result of dust or film formation on the internal glass surfaces caused by failure of the hermetic seal due to faulty manufacturing of the unit. The Manufacturer warranty of the Product shall extend for a period of thirty (30) years after the date of installation. If the Manufacturer elects to supply another product as described below, the warranty on said Product will extend for the balance of the original 30-year period. Units with mini-blinds between the glass will have a 10 year warranty from the manufacture date of the window or patio door. This includes stress crack, seal failure, or blind repair.

## Lifetime Limited Warranty Custom Vinyl Windows & Patio Doors

Series 8000 & Series 7000  
Non-Projected - Transferrable

**Special Notice:** Condensation on the prime window or patio door glass is the natural result of excess moisture in the air and does not indicate a faulty installation. Changes in temperature and humidity may create temporary conditions of condensation. The manufacturer cannot make any guarantees regarding condensation.

The Manufacturer makes no other express or implied representation or warranty of any kind regarding the product, whether as to merchantability, fitness for a particular purpose, or use of any other manner. In particular, the Manufacturer assumes no responsibility for glass breakage, improper usage, failure of Product due to faulty installation or building construction or design, improper handling, failure to follow the Manufacturer instructions regarding the Product, or if the unit is subject to stresses resulting from localized application of heat which causes excess temperature differentials, or if strain is applied to the unit by movement of the building. After market painting/staining of the product will void this warranty.

In the event that the Product fails to conform to the Manufacturer warranty described above, the Manufacturer will, at its option, furnish the purchaser with another Product. F.O.B. Polaris Technologies, Austintown, Ohio. The Manufacturer will bear no other expense such as labor costs of any kind and purchaser's exclusive remedy, in lieu of all incidental, special, or consequential damages, including the cost of negligence, is limited to the furnishings of another product as heretofore described. Manufacturer: Polaris Technologies, 200 North St. Austintown, OH 44015



Call: 800-480-4812  
Email: [info@lwinco.com](mailto:info@lwinco.com)  
[www.lwinco.com](http://www.lwinco.com)

## WARRANTY TRANSFER INSTRUCTIONS

Mail the following to:  
Polaris Technologies  
ATTN: Warranty Claims Department  
500 S. Main Street  
Austintown, OH 44015

- This portion of certificate
- Money order or certified check for \$50 made payable to Polaris Technologies



Int. Cl.: 19

Prior U.S. Cls.: 1, 12, 33 and 50

Reg. No. 2,600,642

**United States Patent and Trademark Office**

Registered July 30, 2002

**TRADEMARK  
PRINCIPAL REGISTER**



LANG EXTERIOR INC. (ILLINOIS CORPORATION)  
2323 WEST 59TH STREET  
CHICAGO, IL 60636

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "EXTERIOR", APART FROM THE  
MARK AS SHOWN.

FOR: NON-METAL WINDOWS; AND VINYL  
AND WOOD SIDING, IN CLASS 19 (U.S. CLS. 1, 12,  
33 AND 50).

SER. NO. 76-208,154, FILED 2-12-2001.

FIRST USE 0-0-1993; IN COMMERCE 0-0-1996.

DAYNA BROWNE, EXAMINING ATTORNEY



<b>Word Mark</b>	<b>LANG EXTERIOR</b>
<b>Goods and Services</b>	IC 019. US 001 012 033 050. G & S: NON-METAL WINDOWS; AND VINYL AND WOOD SIDING. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19960000
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	07.07.02 - Skylights; Windows 09.01.10 - Blinds, window; Curtains; Shades, windows; Venetian blinds; Window blinds 26.17.25 - Other lines, bands or bars
<b>Serial Number</b>	76208154
<b>Filing Date</b>	February 12, 2001
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	May 7, 2002
<b>Registration Number</b>	2600642
<b>Registration Date</b>	July 30, 2002
<b>Owner</b>	(REGISTRANT) Lang Exterior Inc. CORPORATION ILLINOIS 2323 West 59th Street Chicago ILLINOIS 60636
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EXTERIOR" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 8 (6-YR).
<b>Live/Dead Indicator</b>	LIVE



**JONES LANG  
LASALLE**

<b>Word Mark</b>	<b>JONES LANG LASALLE</b>
<b>Goods and Services</b>	IC 036. US 100 101 102. G & S: REAL ESTATE SERVICES, NAMELY, REAL ESTATE MANAGEMENT; RENTAL; FINANCING; RESEARCH OF HISTORY OF REAL PROPERTIES; APPRAISAL; BROKERAGE; CONSULTING ABOUT REAL ESTATE INVESTMENTS; LEASING SERVICES; INVESTMENT IN REAL ESTATE; INVESTMENT SERVICES IN INVESTMENTS COMPOSED OF SECURITIES BACKED BY REAL ESTATE OR INTEREST IN REAL ESTATE. FIRST USE: 19990311. FIRST USE IN COMMERCE: 19990311

## **Group Exhibit**

**B**



Sammy Windows Dionne Lang <buyfromsammy@gmail.com>

---

## Please send me a copy of that letter as soon as possible

---

mgraham <mgraham@polaristechnologies.com>

Thu, Sep 8, 2011 at 7:09 AM

To: Sammy Windows Dionne Lang <buyfromsammy@gmail.com>

Cc: Tom Dulinski <TDulinski@polaristechnologies.com>, TDever <TDever@modembuilderssupply.com>

Dionne, here is a copy of the letter sent to the owner of our company about the Cease and Desist Unauthorized and Infringing use of Lang Trademark. At this time we are not willing to continue with the window program we have been working on. Polaris Technologies does not want to get in the middle of a legal battle between the companies. We would like you to dispose of the literature and warranties that were printed with the Lang name on them for you.

imprints in sets of 300:

### brochures

IM9003 uw patio

IM9004 entry

IM9034 uw wdw

IM9035 thw wdw

IM9042 vs wdw

IM9043 paint

IM9045 vs patio

### warranties

IM9010 If tm uw thw

IM9033 vs

IM9044 paint

IM9046 glass break

Also, we never really got a copy of the confidentiality agreement, but probably would have had issues with signing anything based on a mailing list you have. Many of our current customers and company owned branches are on the list, and it would be very difficult to come to an agreement with each of our current 7 field sales representatives calling on about 25 dealers each week in 22 states. We wish you the best of luck in the new venture you are launching, Sammy Windows.



Sammy Windows Dionne Lang <buyfromsammy@gmail.com>

---

## Polaris on Web Page

---

mgraham <mgraham@polaristechnologies.com>

Thu, Sep 15, 2011 at 12:59 PM

To: Sammy Windows Dionne Lang <buyfromsammy@gmail.com>

Dionne:

This is a follow up to my e-mail correspondence to you on September 8<sup>th</sup> where I informed you that per a cease and desist letter that we received, we must sever ties with your Company at this time. I requested that you dispose of all literature and warranties that had been printed for you. It has come to my attention that the Lang Window web site, [www.langwindowsinc.com](http://www.langwindowsinc.com) still prominently features Polaris advertising materials and warranty cards, we got another letter. Please have these removed from your website. Thank you for your immediate attention to this matter.

Sincerely,

Michael J Graham

---

## **Group Exhibit**

**C**



Sammy Windows Dionne Lang <buyfromsammy@gmail.com>

## Fwd: Important Message From Lang Exterior

Thu, Jul 28, 2011 at 5:30 PM

To: "windows, sammy" <buyfromsammy@gmail.com>

Hello Sam,

I just received this memo from Lang, just thought you should know.

— Original Message —

From: "Lang Exterior" <marketing@langexterior.com>

To: [REDACTED]

Date: 7/28/2011 5:15:17 PM

Subject: Important Message From Lang Exterior

Dear Lang Exterior Customer:

It has come to our attention that a company operating under the name "Lang Windows Inc/Sammy Nelson" is using the Lang name in its sales advertisements. This company is not affiliated with Lang Exterior.

We are hoping to have this matter resolved quickly, but in the meantime please make sure when you order a Lang Exterior product that you are contacting the main office of Lang Exterior, which is located at 2323 W. 59th Street, Chicago, IL 60636. If you have any doubts or questions feel free to contact us at 773-737-4500, or use our toll free number 800-737-4144.

Lang Exterior has been in the window business for over 58 years. We look forward to continuing to provide you with high quality products and price guarantees on all products manufactured and sold by **Lang Exterior**. **Don't accept any imitations!**

We would like to take a moment to thank you for your repeat business and loyalty.

Lang Exterior

**“We manufacture the products we sell”**

If you are having trouble seeing the graphic below for this email please go to this link -> <http://langexterior.com/images/email/99-cents.jpg>



# Lang Won't Be Undersold!

## We Manufacture the Products we Sell

### Lower price guaranteed by 10%

## Windows Starting at \$69.00

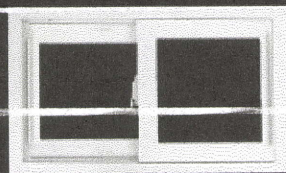
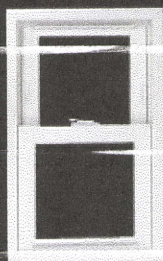
### **PowerWeld** *The Fully Welded Window Series*

**White & Beige Windows are  
the same price!**

Double Hungs   Picture Windows   2-Lite Sliders

**37 Color Choices**

Solid Vinyl Color all the  
way through.  
We Do Not Paint.



Steel Reinforced  
Sashes and  
Masterframes  
Spiral or Coil  
Balancer

7/8" Thick  
Insulated  
Glass with  
Warm Edge  
Technology  
Exterior Glazing  
Bead with Dual  
Durometer Edge  
Seal  
Extruded Inter-  
lock Runs Full  
Width of sashes

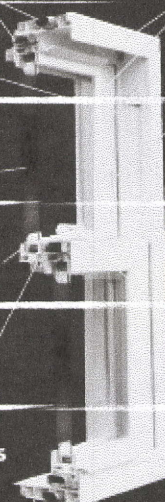
All Welded Main  
Frame And Sash

Night Latches  
Limit Opening  
For Ventilation

Recessed, Slim  
Line Tilt Latches

Heavy Duty  
Sash Locks

Extruded Slim  
Line Lift Rail



We have the lowest glass block prices. If  
you find a comparable product that we  
manufacture lower priced, we'll beat it by  
10% with a legitimate quote.  
(excludes some restrictions may apply)

Vinyl Structural  
Ribbs Top & Bottom  
for Support

**Fastest Lead Time In the USA!**  
made in approximately 5  
working days.

all product hardware  
is subject to change.

## Call Now! 773.737.4500

**Do Not Accept Any Imitations!**

## www.LangExterior.com



To unsubscribe please click on this link: <http://www.langexterior.com/emailprefs>



image001.jpg  
37K



image004.jpg  
9K



image005.jpg  
226K